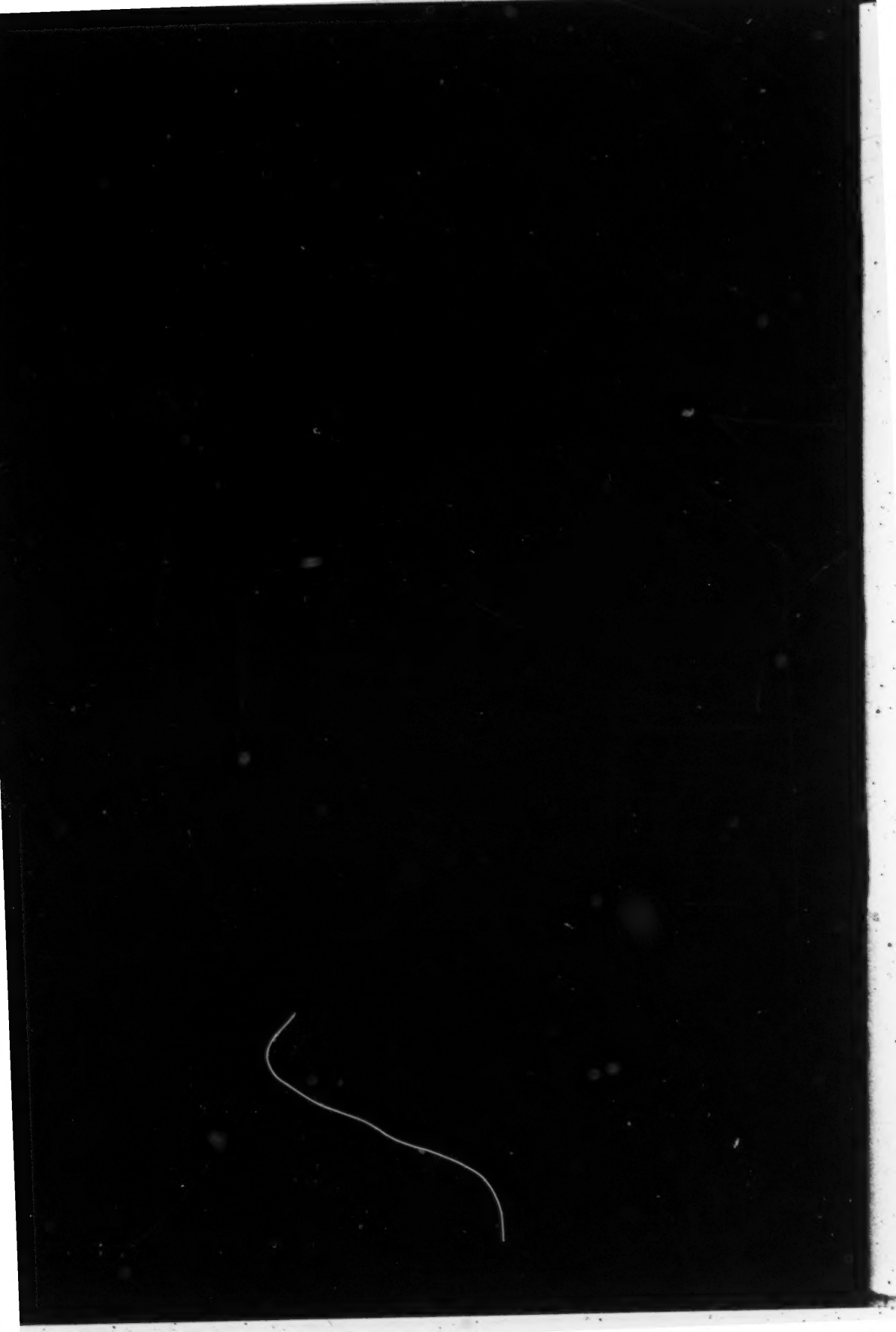

INDEX

CITATIONS

	Page
Appendix	16
Cases:	
Anderson v. *Dunn*, 6 Wheat. 204	4
Boeing Airplane Co. v. *Coggeshall*, 280 F. 2d 654	9
Chicago & Southern Air Lines, Inc. v. *Waterman Steamship Corp.*, 333 U.S. 103	4
Dennis v. *United States*, 384 U.S. 855	9, 11
Dinkletter v. *Walker*, 381 U.S. 618	11
McCray v. *Illinois*, 386 U.S. 300	11
McGrain v. *Daugherty*, 273 U.S. 135	4
Nardone v. *United States*, 308 U.S. 338	12, 15
Palermo v. *United States*, 360 U.S. 343	9, 11
Quirin, Ex Parte, 317 U.S. 1	4
Roviaro v. *United States*, 353 U.S. 53	11
Totten v. *United States*, 92 U.S. 105	7
United States v. *Abel*, 362 U.S. 217	4
United States v. *Battaglia*, C.A. 7, Nos. 16312, 16313, decided April 10, 1968	15
United States v. *Coplon*, 185 F. 2d 629	12
United States v. *Curtiss-Wright Corp.*, 299 U.S. 304	4
United States v. *Dixon*, 117 F. Supp. 925	10
United States v. *Reynolds*, 345 U.S. 1	7
Westinghouse Electric Corp. v. *City of Burlington*, 351 F. 2d 762	9
Rules:	
F.R. Crim. P., Rules 16, 17(c)	8, 9
F.R. Civ. P., Rule 26(b)	8
Miscellaneous:	
Brownell, *The Public Security and Wire Tapping*, 39 Cornell L.J. 195 (1954)	4

297-584—68——1

Miscellaneous—Continued

	Page
Greenwalt, *The Consent Problem in Wiretapping and Eavesdripping: Surreptitious Monitoring With the Consent of a Participant in a Conversation*, 68 Columbia L. Rev. 189	6
Kamisar, *The Wiretapping-Eavesdropping Problem: A Professor's View*, 44 Minn. L. Rev. 891	4
McCormick on *Evidence* (1954 ed.) 307	8
Note, *The Coplon Case: Wiretapping, State Secrets and National Security*, 60 Yale L.J. 736 (1951)	12
Rogers, *The Case for Wire Tapping*, 63 Yale L.J. 792	3
Westin, *Privacy and Freedom* 391	4
Westin, *The Wire-Tapping Problem*, 52 Colum. L. Rev. 165	4

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 133

RUBY KOLOD, WILLIE ISRAEL ALDERMAN, AND FELIX ANTONIO ALDERISIO, PETITIONERS

v.

UNITED STATES

ON MOTION TO AMEND THE COURT'S ORDER OF JANUARY 28, 1968

MEMORANDUM FOR THE UNITED STATES

1. This case is before the Court on the government's motion to modify this Court's order of January 28, 1968, which remanded the case to the district court for an adversary proceeding to determine whether the convictions herein were tainted by electronic eavesdropping. The government seeks to modify that order only to the extent of providing that the government's records of any electronic surveillance of a defendant's conversations or of a defendant's premises should initially be produced for an *in camera* examination by the trial judge, who can then order any further proceedings which he deems appropriate.

We stress at the outset that the government's motion does not involve an effort to resist disclosure or to disclose to the district court anything less than all

of the materials which reflect petitioners' conversations. The issue raised by the motion is solely one of procedure—whether disclosure shall be made in the first instance to the district judge so that he may initially determine if the material, or any portion of it, has a sufficient relationship, or possibility of relationship, to the case at bar to require any further proceedings.

We suggest this procedure because the experience of the Executive Branch has shown that the public disclosure of this type of material has a serious potential for harm to third parties and, in some instances, to national security. Recognizing, as we do, that a defendant's right to object to the use of illegally obtained evidence cannot be sacrificed whenever there is any reasonable basis for arguing that the overheard conversation related to the offense for which he was prosecuted, we also know that there are instances where a judge could determine that the overhearing is so patently unrelated to the case at issue that there is no need to increase the risk of public disclosure of material harmful to third parties or to the national security. Here, again, we stress that the district judge would have the power to order further adversary proceedings any time he had even the slightest question whether the overheard conversation related to the offense at issue.

To set the matter in its broader context, we first review briefly the policies which the Executive Branch is presently following in order to control electronic surveillance and the measures which it has adopted in order to discover and bring to the attention of the

courts material derived from past instances of electronic surveillance. We then turn to the various considerations which, in our view, support the procedure proposed in the government's motion.

2. In the past, electronic surveillance has been utilized by government agencies in three types of investigation: (1) those related to the national defense; (2) those where human life was in danger; and (3) those involving individuals believed to be engaged in organized criminal activity. There is currently in effect a memorandum of the Attorney General to the heads of all executive departments and agencies which is designed to prohibit electronic surveillance of conversations without the consent of at least one of the parties thereto.[1] This directive applies to all investigations save those involving the collection of intelligence with respect to matters affecting the national security; in the case of such investigations, the specific authorization of the Attorney General must be obtained for each installation of an electronic surveillance. Thus, with the exception of national security investigations,[2] the issue before the Court relates to the procedure for

[1] The memorandum currently in effect was issued on June 16, 1967. Prior instructions had been issued by the President and the Attorney General in June and July 1965. See Supplemental Memorandum for the United States in *Black* v. *United States*, Oct. Term, 1965, No. 1029.

[2] The policy of the Department of Justice in relation to the interception of communications in cases involving matters of national security was established as the result of a confidential Presidential directive from President Roosevelt to Attorney General Jackson, dated May 21, 1940. The procedure was later expressly approved by President Truman and has been sanctioned by all succeeding Attorneys General. See generally Rogers, *The Case for Wire Tapping*, 63 Yale L.J. 792;

dealing with a situation resulting from government activity of a kind which has been terminated.

Brownell, *The Public Security and Wire Tapping*, 39 Cornell L.J. 195 (1954). While the question of the constitutionality of such activity by the Executive is not before the Court, it seems appropriate to note that the application of the Fourth Amendment in this area involves discrete considerations.

In *Chicago & Southern Air Lines, Inc.* v. *Waterman Steamship Corp.*, 333 U.S. 103, 109, 111, this Court recognized that the "President also possesses in his own right certain powers conferred by the Constitution on him as Commander-in-Chief and as the Nation's organ in foreign affairs" and that the "President, both as Commander-in-Chief and the Nation's organ for foreign affairs, has available intelligence services whose reports are not and ought not to be published to the world." See, also, *United States* v. *Curtiss-Wright Corp.*, 299 U.S. 304, 314. In endeavoring to gather intelligence with regard to matters affecting national security, the President is operating in fields in which he has been delegated primary responsibility by the Constitution. Thus, just as this Court has recognized that the Congress has the right to determine for itself when there is probable cause to arrest a person and bring him before Congress to testify, *Anderson* v. *Dunn*, 6 Wheat. 204, see *McGrain* v. *Daugherty*, 273 U.S. 135, it may be argued that the Executive has a comparable power to determine for itself when it is justified in instituting electronic surveillance for the purposes of gathering intelligence information essential to the national defense. Cf. *United States* v. *Abel*, 362 U.S. 217 (involving the question of administrative arrest); *Ex Parte Quirin*, 317 U.S. 1; Kamisar, *The Wiretapping-Eavesdropping Problem: A Professor's View*, 44 Minn. L. Rev. 891, 919–920. Professor Westin, one of the foremost students of the problems of electronic eavesdropping and privacy, has concluded that the executive should be allowed to conduct its intelligence-gathering operations free from judicial scrutiny. Westin, *Privacy and Freedom* 391; see Westin, *The Wire-Tapping Problem*, 52 Colum. L. Rev. 165, 205–206. This does not necessarily mean that, when the executive is conducting an investigation in the national security field with a view to eventual criminal prosecution, it should not comply with the requirement of obtaining a warrant when it seeks to gather evidence for use in that prosecution.

Recognizing its obligation not to use evidence or leads obtained in violation of a defendant's protected rights, the government, as this Court has previously been advised, has initiated a program to uncover instances in which a criminal defendant may have been subject to electronic surveillance.[3] The question remains: What procedure is to be followed when it is discovered that a defendant or his premises were at an earlier time the subject of such surveillance. While at first glance it might appear that the simple answer would be to furnish the defense with the logs or memoranda of any overheard conversation in which the defendant participated, or where his premises were the subject of the surveillance, there are difficulties inherent in that course which we believe warrant the adoption of a more flexible procedure—one which would accord the district judge some discretion to determine whether such disclosure is required.

3. It is important to note that a criminal defendant may have the right to challenge the use of electronic surveillance for either of two reasons: (1) he may have been a participant in conversations overheard

[3] A memorandum of the Acting Attorney General of November 3, 1966, addressed to all United States Attorneys, summarizes the Department's policy in this regard as follows:

"This Department must never proceed with any investigation or case which includes evidence illegally obtained or the fruits of that evidence. No investigation or case of that character shall go forward until such evidence and all of its fruits have been purged and we are in a position to assure ourselves and the court that there is no taint or unfairness. We must, also, scrupulously avoid any situation in which an intrusion into a confidential relationship would deny a fair hearing to a defendant or person under investigation."

in this manner; or (2) although he was not a participant, the conversations may have taken place in premises owned by him or in which he had some other interest which would give him standing to object to the use of the evidence or leads obtained. Thus, a defendant may have standing to challenge the seizure of a conversation in which he was not a participant, even though the actual participants might have every wish to keep the defendant and other persons from learning the contents of their conversation. Similarly, even where the defendant was a participant in the conversation, the other participant may have said things which he would not wish publicly disclosed, particularly in the form of a reliable transcript. See Greenawalt, *The Consent Problem in Wiretapping and Eavesdropping: Surreptitious Monitoring With the Consent of a Participant in a Conversation,* 68 Columbia L. Rev. 189, 218–219. In addition, the transcript may contain highly prejudicial references to third parties by one of the participants in the conversation—remarks which the defendant has no particular interest in protecting from public disclosure. In each of these situations, the disclosure of the overheard conversation could do serious harm to a party other than the defendant.

Past experience has shown that the potential harm to third parties from public disclosure in such situations is not insubstantial. Thus, in an earlier memorandum in this case, we noted that after the government, in the *Black* case, had delivered to the defense logs and other materials reflecting conversations which took place in the defendant's hotel room, a series of

articles quoting from these materials appeared in the newspapers. We have set forth as an appendix to this memorandum copies of two of these articles; they illustrate the type of material, extremely prejudicial to third parties but not directly involving the defendant, that may be contained in logs of electronic surveillance. This danger of injury to third parties surely suggests that it is in the public interest to avoid any wholly unnecessary disclosure of this type of material.

Moreover, in cases where electronic surveillance is used in an effort to gather intelligence for purposes of national security, the government has a recognized privilege to protect the information obtained from unnecessary disclosure. Thus, in *Totten* v. *United States,* 92 U.S. 105, 106, this Court noted that the means by which the government conducts its intelligence-gathering operations should not be disclosed because such disclosure "might compromise or embarrass our government in its public duties."[4] See, also, *United States* v. *Reynolds,* 345 U.S. 1. We recognize, of course, that when, during an electronic surveillance of this kind, a defendant is overheard discussing something which is relevant to his prosecution, the government's privilege to protect State and military secrets must yield to whatever extent necessary to insure that illegally obtained evidence is not

[4] As this Court is aware, a case expressly raising these national security considerations is presently pending before the Court on petitions for writs of certiorari. *Butenko* v. *United States*, No. 1007 Misc., this Term, and *Ivanov* v. *United States*, No. 885, this Term.

used to convict. We contend only that the public interest in preventing the unnecessary public disclosure of the means or substance of intelligence operations involving national security makes it appropriate to place on the district judge (subject of course to full appellate review) the responsibility for making an initial determination whether the government has overheard anything which could possibly relate to the offense charged.

4. A procedure requiring the district judge to make a preliminary determination of possible relevancy is consistent with the traditional role of the district judge and does not unconstitutionally impinge on the rights of the defendant. As Professor McCormick has noted (McCormick on *Evidence* (1954 ed.) 307):

> The determination of questions of fact and the applications of legal standards thereto in passing upon the admissibility of evidence and the validity of claims of evidential privilege are traditionally the responsibility of the judge.

Thus, both the Civil and Criminal Rules of Procedure provide that pretrial discovery should be limited to "relevant" material and, therefore, cast upon the judge, prior to trial, the burden of determining what may eventually prove to be relevant. See F.R. Civ. P., Rule 26(b); F.R. Crim. P., Rules 16, 17(c). It is also familiar doctrine that when there is some recognized interest militating against unnecessary public disclosure of information which a litigant is seeking to discover, it is appropriate to submit the material to the district judge for *in camera* examination so that he may determine whether disclosure should be ordered.

Westinghouse Electric Corp. v. *City of Burlington,* 351 F. 2d 762 (C.A.D.C.); *Boeing Airplane Co.* v. *Coggeshall,* 280 F. 2d 654 (C.A.D.C.). Moreover, Rule 16 of the Federal Rules of Criminal Procedure provides that the trial court may deny a defendant pretrial discovery in a criminal case on the basis of an *in camera* showing of cause by the government. And this Court has expressly approved the procedure of having the trial judge make an *in camera* determination of relevancy in order to determine whether a defendant has a right to discover the prior statements or grand jury testimony of government witnesses. *Palermo* v. *United States,* 360 U.S. 343, 354; *Dennis* v. *United States,* 384 U.S. 855, 885.

While there may be force to the argument that due process requires that a defendant be furnished with any statement that he has made which relates to the crime at issue, there is no basis for a contention that due process requires that a defendant be furnished prior statements totally unrelated to the offense at issue. Indeed, Rule 16 of the Rules of Criminal Procedure expressly limits a defendant's right to discover his prior statements to "relevant" statements.

Although a defendant does have a right to suppress the use as evidence against him of his statements which have been illegally overheard, he does not have a property interest in the words which entitles him to their return. Indeed, the words, once spoken, are beyond recapture; and the fact that someone else has made some record of those words does not give the speaker a property interest in that record. The claim

of petitioners here is similar to that of the defendant in *United States* v. *Dixon,* 117 F. Supp. 925 (N.D. Cal.), who sought the return of a photograph of objects taken during the course of a search which the court held to be illegal. The court ruled that the photograph was "not property of the defendant" and need not be delivered to him, although its use as evidence would be suppressed (p. 927).[5] Petitioners' effort to analogize this case to an action or proceeding aimed at the return of property obscures the real issue—namely, the procedure to be followed in determining whether any of the evidence admitted against petitioners at their trial was obtained, directly or indirectly, by illegal means.

Petitioners nonetheless insist that an *in camera* examination in order to make a preliminary determination of relevancy in this case would unconstitutionally deprive them of a fair hearing (Pet. Br., pp. 12–14). We submit that the procedure of having the judge make an *in camera* determination whether the overheard conversation relates to the offense at issue is surely no less consistent with the principles of a fair hearing than the procedure of having the judge

[5] It might be thought that the appropriate remedy in a particular case would be to require the government to destroy any record it had made of a conversation which was illegally overheard. However, this procedure is impractical if the government is to continue to call to the attention of the courts situations in which illegal eavesdropping may have some effect on a particular case. For example, if A and B are overheard and later A is indicted, the government would not be in a position to advise the court of the extent of such eavesdropping if it had been ordered to destroy the records of the eavesdropping during the course of an earlier suppression hearing involving B.

determine whether prior statements or grand jury testimony relate to the witness' testimony. See *Palermo* v. *United States, supra; Dennis* v. *United States, supra.* Indeed, since prior statements and grand jury testimony, if relevant, might be used to undermine testimony dealing directly with the issue of guilt and innocence, it seems plain that the question of the procedure used to determine the relevancy of such material would have stronger constitutional overtones. See *Linkletter* v. *Walker,* 381 U.S. 618, 639. Here, of course, there is no challenge to the reliability of the evidence which led to petitioners' convictions.

Numerous decisions confirm the proposition that the standards to be followed at a trial involving the question of guilt or innocence are more demanding than those applicable at a hearing to suppress totally reliable evidence. Thus, in *Roviaro* v. *United States,* 353 U.S. 53, this Court held that a defendant at trial was entitled to discover the identity of the government informant when it appeared that the informant's testimony would be relevant and might be helpful to the defense. On the other hand, in *McCray* v. *Illinois,* 386 U.S. 300, the Court concluded that the defendant was not entitled to discover the identity of the government informant at a suppression hearing, even though the informant provided the only information which could justify the defendant's arrest and the seizure of the evidence sought to be suppressed. If in *McCray* the defendant's right to a fair hearing was not violated when he was foreclosed from obtaining the testimony of the informant which would have

been relevant on the question of suppression, it seems *a fortiori* that no right to a fair hearing is violated if a trial judge finds from an *in camera* examination that the material in question is not even arguably relevant to the offense at issue.*

* We note that the decision of the Second Circuit in *United States* v. *Coplon*, 185 F. 2d 629, is contrary to the position which we urge here. However, we submit there are several reasons why the *Coplon* decision should not be followed by this Court. See generally, Note, *The Coplon Case: Wiretapping, State Secrets, and National Security*, 60 Yale L.J. 736 (1951). *First*, the court in *Coplon* took no note of the distinction, which we have referred to above, between the considerations governing the conduct of the trial on the question of guilt or innocence and those governing the conduct of a suppression hearing. See also *id.* at n. 16. *Second*, the decision in *Coplon* does not justify the application of stricter procedures for determining the question of relevancy in situations such as the present one than are applied in determining the relevance of a witness' prior statements or grand jury testimony. See pp. 10–11, *supra*. *Finally*, the *Coplon* decision is premised on the proposition that, once the government has been shown to have engaged in some illegality, it has the burden of introducing evidence to prove that no taint resulted. However, this underlying proposition is contrary to the express statement of this Court in *Nardone* v. *United States*, 308 U.S. 338, 341 that—

> * * * A sensible way of dealing with such a situation—fair to the intendment of § 605, but fair also to the purposes of the criminal law—ought to be within the reach of experienced trial judges. The burden is, of course, on the accused in the first instance to prove to the trial court's satisfaction that wire-tapping was unlawfully employed. Once that is established—as was plainly done here—*the trial judge must give opportunity, however closely confined, to the accused to prove that a substantial portion of the case against him was a fruit of the poisonous tree.* This leave ample opportunity to the Government to convince the trial court that its proof had an independent origin. [Italics added.]

But, at all events, it seems particularly inappropriate to premise a decision on the application of strict principles of

5. Petitioners make various practical objections to the procedure which the government proposes, arguing that it is unworkable. We submit that these objections are not well taken.

Petitioners suggest that the information obtained from electronic surveillance may be so commingled with other information that it would be impossible for the judge to determine what leads came from the electronic surveillance. However, in most cases the government would be able to deliver to the judge the actual logs—or the memoranda—of the conversations which were made at the time of the overhearing, so that it would be perfectly clear to the judge what information came from the electronic surveillance.

Petitioners also contend that in some instances there will be such a large volume of material handed over to the district judge that he will not possibly be able to determine prior to trial what is or may be relevant to the case. Of course, the trial in the instant

---

burden of proof when the government has stated that it will come forward and admit any instance of illegal surveillance, without requiring the defendant to bear the initial burden of establishing that an illegal search took place.

[1] Petitioners refer to the case of *McGarry* v. *United States*, No. 1184, this Term, in which the investigating agent destroyed the recordings of overheard conversations after sending out information to field men. We would agree with petitioners that in such a case an *in camera* proceeding would not be appropriate. As we note more fully *infra*, it is not our contention that an *in camera* procedure is to be used in all cases. We contend only that the district judge should have the power to conduct such a proceeding when he determines on the basis of all the facts and circumstances of a particular case that such a procedure will adequately protect the defendant's interests.

case has been conducted and the trial judge knows exactly what evidence has been offered. Petitioners, moreover, persistently overlook the fact that the government is not suggesting that these matters be handled *in camera* in all cases. We recognize that there may be cases in which the trial judge may not be able to say, on the basis of an *in camera* examination, whether or not the overheard conversation related in any way to the offense at issue; in such cases, the trial judge could order the material turned over to defense counsel. We are suggesting only that there are instances in which the trial judge can readily determine from examining the records of the overheard conversations that those conversations have no conceivable relation to the offense at issue. Moreover, in instances where there is a substantial amount of overheard material, there may only be a small portion of this material which would prove harmful to third persons or the national security and in such cases it might be possible for the court to excise such portions and deliver the remainder to the defense.

In sum, we are not arguing for any hard and fast rule that is to be applied in all cases. Rather, we are suggesting only that the district judge be granted the discretion to determine on the basis of the facts of each particular case what procedures are appropriate for that case. In some instances, as the government has recognized *sua sponte*, the situation requires that the defendant be furnished with the records of all overheard conversations. In others, however, the court may well determine that the overheard conversations are so clearly unrelated to the case at

bar that further disclosure should not be required. See *United States* v. *Battaglia*, C.A. 7, Nos. 16312 and 16313, decided April 10, 1968.

As this Court recognized in *Nardone* v. *United States*, 308 U.S. 338, 342:

> The civilized conduct of criminal trials cannot be confined within mechanical rules. It necessarily demands the authority of limited direction entrusted to the judge presiding in federal trials, including a well-established range of judicial discretion, subject to appropriate review on appeal, in ruling upon preliminary questions of fact. Such a system as ours must, within the limits here indicated, rely on the learning, good sense, fairness and courage of federal trial judges.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the Court's order of January 29, 1968, should be modified to provide that the cause be remanded for an *in camera* examination of all logs reflecting conversations involving petitioners and for such further proceedings as the district judge may deem necessary and appropriate as a result of that examination.

ERWIN N. GRISWOLD,
Solicitor General.

APRIL 1968.

APPENDIX

[From the Washington Post, Dec. 26, 1967]

SPACE PLANT DEALS BARED BY HOTEL "BUG"

(By Drew Pearson and Jack Anderson)

The most headlined case of electronic bugging in Washington was that of the Sheraton-Carlton Hotel suite of lobbyist Fred Black.

It caused the Supreme Court to reverse Black's conviction for income tax evasion, and caused the Justice Department to make a sensational admission that J. Edgar Hoover had listened in on hundreds of phone conversations over a number of years.

This column can now report what the FBI heard when it tapped the Black hotel suite.

The transcripts of the eavesdropped conversations are stamped "June," an FBI code word for "secret." Their contents, however, throw such important insight into how the cards are stacked on Capitol Hill against the public that the public is entitled to know the full story. An illustration is the manner in which oil executives sought to restrict membership in the Senate Finance Committee so there would be no plugging of oil tax loopholes.

This particular call was placed at 5:47 p.m., Feb. 13, 1963, by Bobby Baker, the former Senate Secretary, who telephoned from Black's hotel suite to Dean McGee of the Kerr-McGee Oil Company.

He told McGee that the Senate liberals were trying to pack the Senate Finance Committee in order to plug the oil depletion tax loophole.

"I think if D. Russell (Senator from Georgia) holds firm, we'll be able to prevent it," Baker said prophetically. This is what happened:

SAID LYNDON TO BOBBY

Baker then demanded: "Are you in your office by yourself?"

Apparently reassured, Baker confided: "Well, Lyndon told me the other day that Carl Albert told him they did not think Bob Jr. could win that seat. They want you to take it. I told them that was out."

This was in reference to a confidential discussion between then-Vice President Lyndon Johnson and House Democratic Leader Carl Albert over a plan to run Robert Kerr Jr., for the Senate seat left vacant by the death of his father, the late senior Senator from Oklahoma.

Baker then told McGee, who was Sen. Kerr's petroleum partner, that Albert wanted General Dynamics to build a plant in Oklahoma. He said Albert felt "he has got to have something in his district to survive politically."

Baker went on to describe the difficulty in getting space facilities for Oklahoma since Sen. Kerr's death. James Webb, director of NASA, owed his appointment as space chief to Sen. Kerr, who had expected Webb to take care of Oklahoma in return.

Regarding this, the FBI listened in and dutifully recorded the following commentary. Baker:

"Two things—first of all, since the old man (Kerr) died, this fellow Webb has gotten weaker and weaker where the state of Oklahoma is concerned. We sent them several things before the Senator died. When we got these

> back, (we) got back an okay on one-third of what we wanted to put there. He's just not going to do anything for us."

In the end, however, either Baker's wirepulling or Webb's influence did pay off. Not only General Dynamics but North American Aviation opened plants in Rep. Albert's district shortly before the 1964 election. The North American plant was arranged by Fred Black, who represented the company in Washington.

The FBI bug picked up Black's side of a telephone conversation with a North American official at 7 p.m. on April 1, 1963.

> "I had a call about an hour ago," reported Black, "from Mike Monroney's office, and he and Carl Albert want to have breakfast with me Wednesday morning at 8 a.m. at the Senate Office Building. Just the two of them. I accepted the date and thought you'd better know. The two of them are the two big ones in Oklahoma * * * Albert is taking his rightful place in the sun here, and Monroney is the senior Senator from Oklahoma. I wanted you to be alerted."

BREAKFAST RENDEZVOUS

The G-men scurried up to Capitol Hill the next morning to check whether Black kept his breakfast date. They were wary, however, about posting agents inside the Senate Office Building.

In a secret report, stamped "June," the G-men reported to their boss, J. Edgar Hoover:

> "WFO (Washington Field Office) discreetly covered the vicinity of Black's house, office and the Sheraton-Carlton Hotel prior to 8 a.m. for

the whereabouts of the Cadillac normally used by Black. It was not observed prior to 8:30 a.m. * * *

"No surveillance was maintained in the Senate Office Building, however. WFO made a discreet survey of the streets in the vicinity of the Senate Office Building for Black's car during the pertinent period with negative results. * * *

"WFO will be alert for any information which would indicate Black did or did not keep his appointment with Sen. Mike Monroney and Rep. Carl Albert."

The two congressional leaders no doubt will find it interesting that FBI agents were checking on their breakfast meeting.

[From the Washington Post, Dec. 28, 1967]

"Bugging" Data Links GOP Bigwigs

(By Drew Pearson and Jack Anderson)

The famous FBI bug in Fred Black's Sheraton-Carlton Hotel suite, which started the national uproar over eavesdropping, picked up some startling conversations involving House GOP Leader Gerald Ford.

The wiretapping, which had to be authorized by Attorney General Bobby Kennedy, appeared to be aimed in part at spying on Vice President Johnson's southwest political friends. It was known at the time that no love was lost between the Vice President and the late President's brother.

However, the FBI's efficient electronic devices also picked up conversations involving Republicans. Especially interesting is revelation of the manner in which defense contracts became involved in politics.

On April 23, 1963, two AVCO Corporation executives, unaware that their every word was being taped by the FBI, discussed freely how Rep. Ford of Michigan had intervened to help spare them from a Federal investigation.

The Army had awarded AVCO two negotiated contracts to produce transistor radios for tanks, jeeps, and other military vehicles. This aroused then-Congressman Earl Wilson (R-Ind.) who raised some sticky questions about the Army's failure to seek competitive bids.

When Government auditors began poking into the matter, AVCO's President James Kerr and executive committee chairman Earl "Red" Blaik hurried to Washington to see what could be done about sidetracking the investigation. Unhappily for them, they stopped by the suite of their Washington representative, Fred Black, to discuss strategy.

What the FBI heard is still supposed to be kept under wraps. The listening device was so secret that the FBI's own internal reports, though highly classified, referred to it only as "informant WF 1441–C (asterisk)."

WIRE-PULLING, "BUGGING"

However, we believe the public is entitled to know about the wire-pulling and wiretapping that goes on in Washington.

In this case, Blaik reported to Kerr on his visit that morning with "Jerry," whom the FBI identified as Rep. Ford. Blaik said Jerry had not only discussed the contract trouble with Wilson but had arranged with House Appropriations Chairman George Mahon (D-Tex.) to question Comptroller General Joseph Campbell about his investigation.

"So yesterday afternoon in their meeting, their appropriations meeting," related Blaik, "why they had

Campbell in. So they threw it up to Campbell. They wanted to know why he had men over there, and he said he didn't, so they said they found out what he was telling was not correct, although it was partially correct."

It's interesting that Comptroller General Campbell is charged by Congress to investigate the Executive Branch of Government for Congress, yet in this case Congressmen were trying to sidetrack the investigation.

"So he (Campbell) said that Wilson had asked him to look into two cases," Blaik continued, not knowing every word was being recorded by the FBI. "Jerry was trying to find out what the two cases were. He finally got the dope. He said he was investigating for Wilson an Admiral contract and a Bendix contract and AVCO was not in on it."

Meanwhile, however, an FBI agent called at AVCO's Crosley plant in Cincinnati. Back in Black's suite the following day, Blaik phoned Rep. Ford to report this latest development. The FBI bug picked up only Blaik's end of the conversation.

"Say, Jerry," began Blaik, "I want to cut you in on this one thing. Out at Crosley's yesterday, they had an FBI man."

He responded to some remarks from Rep. Ford, then said: "Uh! Uh! Well, he must have made some complaint to the Department of Justice, wouldn't you think so? * * * Yet! That's why he is trying to do, try to show that there is some stuff in here other than ordinary * * * He was investigating certain aspects of the VRC–12" (Army terminology for the vehicular radios).

Kerr, at Blaik's side, said: "I'll send him a transcript of the interview."

An indignant Earl Blaik denied to us that he had ever held any such discussion with Ford.

"I don't think there is anything to all that," he snorted. "I did not talk to Ford. I have no memory of this at all."

However, Ford acknowledged receiving a number of calls from Blaik on the VRC–12 contract. As Ford recalled it, AVCO had developed the radios for the Army, therefore had felt entitled to the production contracts without bidding.

Wilson, reached at his home in Bedford, Ind., said that AVCO had been paid by the Army to develop the radios, then had received the first two multi-million-dollar contracts without competition. The FBI had found some "improprieties," said Wilson, but nothing serious enough to warrant prosecution.

We asked Ford why he would intervene for AVCO, which has no plants in his home state of Michigan. The House Republican Leader explained that he and Blaik have been close friends since coaching days more than 30 years ago.

U.S. GOVERNMENT PRINTING OFFICE: 1968